



## Housing Policy and Practices Advisory Group

### Summary of Meeting

August 4, 2015  
10:00 am – 3:00 pm

#### **Attendance**

SCAG –Huasha Liu  
ABAG – Dwayne Bay  
APA – Barbara Kautz  
League of California Cities – Betsy Strauss  
Local Government Representative – Leighann Moffitt (Sacramento County)  
Local Government Representative – Colby Cataldi (Orange County)  
Public Interest Law Project – Mike Rawson  
California Rural Legal Assistance – Ilene Jacobs  
Housing California – Tyrone Buckley  
Western Center for Law and Poverty – Stephane Haffner  
Kennedy Commission – Cesar Covarrubias  
BIA – Paul Campos  
CTCAC – Mark Stivers  
HCD – Lisa Bates, Deputy Director, Housing Policy  
Glen Campora, Assistant Deputy, Housing Policy  
Melinda Coy, Specialist  
Autumn Bernstein, Facilitator

#### **Agenda Items**

##### **Follow-Up from June 25 Meeting**

Staff presented draft language amending RHNA statute to address (1) unnecessary 3% dual threshold criteria and (2) RHNA/RTP timing. Regarding statutory RHNA/RTP timing provisions, HCD sets the RHNA “projection” period when informed of RTP “estimated” adoption date and determines total RHNA housing units (RHNA period and units can’t be changed after RHNA is finalized). In almost all cases, MPOs/COGs chose a later RTP adoption date that sets the housing element “planning” period. Different projection and planning periods conflict with SB 375 provisions. In addition, most small regional transportation planning agencies (RTPAs) on a 5-year RTP update schedule took advantage of the statutory option for local governments to change from a 5-yr to a 8-yr housing element update schedule by “electing” to update the RTP on a 4-year schedule; however, after making the election there is no provision precluding RTPAs from choosing to update the next RTP earlier or later than 4-years which would result in different RHNA projection and housing element planning periods. Draft statutory changes are intended to give COGs and MPOs

flexibility regarding RTP adoption and allow for adjustments to RHNA housing units and projection and planning periods.

Discussion:

*Single RHNA 3% threshold*

- Consensus was reached to the single threshold criteria using total population rather than population growth.

*RHNA/RTP Schedule Alignment*

- MPOs need flexibility to adopt RTP
- With alignment issues, many housing advocates worry about “uncovered months” of housing needs. HCD explained that RHNA is a point in time projection (e.g.10 yrs.) that per statute precedes housing element planning period (e.g.8-yrs) a minimum of 2 years (1 year for COG to develop RHNA Plan and 1 year for jurisdictions to update Housing Element). Next projection period covers “gap” time period difference between RHNA projection and element planning period. Example:
  - 5<sup>th</sup> cycle: RHNA Jan 2013-Jan 2023. Element Jul 2015-Jul 2023. Gap Jan – Jul 2023.
  - Next cycle: RHNA start 2021 at least 2 yrs. before next element due date in Jul 2023.
- RTPA alignment issues (RTP/RHNA/Element periods) can arise due to flexibility RTPAs have to change jurisdiction element updates from a 5 to 8 year planning cycle, including reverting back from a 8 yr. to a 5 yr. cycle, and updating RTP earlier or later than scheduled.
- Adding more time limits for Housing Elements may not help jurisdictions which already adopt late (further discuss potential language amendments for subsequent meeting)
- Consider disconnecting Housing Element adoption from RTP
- Clarify to cities that Housing Element follows RTP
- Element due date 18 months after RTP adoption can work because due date is clear
- Main concern for MPOs is that they get the RHNA early enough to address 375, RTP, SCS strategies
- Draft language is difficult to understand; discuss with COGs and RTPAs for input as details can be complicated
- Local governments and MPOs and advocates want to know when the Housing Element is due
  - Feedback from RTPAs needed (repeating need)
- Need harder deadline regarding RTP adoption that seems to be source of issue

*SCAG presented handout on potential RTP/RHNA timing changes for discussion*

- MPOs planning and projection periods are challenging because of the lack of synchronization between deadlines
- Need streamlined adoption of RTP, SCS
- Synchronized adoption date of RTP, SCS, and RHNA and an 18 mo due date means that the Housing Element will continue into the following cycle
- Receiving RHNA earlier would be easier in order to deal with appeals processes so can make deadlines and not affect rest of processes

#### *Next Steps*

- Give feedback on language, come up with language for specifically dealing with planning gaps
- Include COGs in drafting of language (Possible working group)

### **Public Participation**

Staff presented issue memo on public participation. The statute requires jurisdictions make a “diligent” effort to achieve public participation during the development of the housing element. However, there are not consistent standards on what constitutes “diligent” resulting in inconsistent efforts that may limit a jurisdiction’s ability to adequately plan for the housing needs of lower-income and special needs populations.

#### Discussion:

- Public participation is varied; some jurisdictions have quite a bit of interest, some jurisdictions have only “information sessions”, and some have public advisory early on.
- There has been a number of omissions with effective public participation
  - Issues reaching special needs populations
  - Issues with timing of public hearing, people being able to attend, and understanding the draft element
  - Many jurisdictions do not understand federal and state laws around providing foreign language access in these public processes
- Approval process – concern about draft revisions not going back for public participation after they have received approval from HCD.
- Even when jurisdictions want to have good public participation, they have a very difficult time
  - It is difficult to understand Housing Element and how it relates to general public’s lives
  - Mostly anti-density people really participate for decrease in densities
  - Cities plan workshops and other forms of outreach, but no one comes

- Changes to the draft should be made available to advocates, and comments should be made available to cities. Important that all economic segments are involved in preparation of the draft.
- Transparency is an important part of the process in its different stages both in development and in the revisions. There is a disincentive for public participation after HCD approval.
- There should be some sort of criteria for public participation
- A stakeholder only or a "working group" approach is not inclusive. Public input and how to address is not adequately described or fully addressed before submittal to HCD.
- Locals are making efforts and want to make it happen; however, comments and comment periods are reminiscent of CEQA. There is a need to balance mandated comment periods with a desire for diversity.

*Group was asked what the process looks like for responding to comments and revisions and transparency and what solutions look like.*

- Any criteria should allow cities and counties to use the format that fits
- Need to take into consideration the limited resources of small jurisdictions – allow local jurisdictions to pool resources when there is a common narrative
- Sacramento County: It was difficult for staff to conduct outreach during a tough time in the economy. County has 14 planning advisory councils and every community is different. HCD has discretion to define evidence of public participation. It is hard to turn an organic discussion into concrete policies. Public participation shows that there is a real constituency group out there for real programs.
- Effective public participation is broader than comments
- Three timeframes needed in public participation:
  - 1) During the development
    - a. Involves people least sophisticated in planning lingo
    - b. Answers the question: "what do we need in this City", Housing Elements are a unique opportunity to ask this question
  - 2) Before submission to HCD
    - a. Evaluation of programs, involves people that are involved in program implementation
  - 3) After submission to HCD
    - a. Transparency is key
- By setting a minimum do we create a maximum?

Proposals (number of members in support based on scale 1-5).

Proposal A: Require a specific public review timeframe (30 days) prior to sending the first housing element update draft to HCD.

3 members: 5's, 8 members: 4's, 1 member: 3

Proposal B: HCD will not review formal draft submittals without evidence to make diligent effort to conduct public participation

4 members: 5's, 3 members: 4's, 1 member: 3, 2 members: 2's, 2 members: 1

- No consensus reached. Idea that if having a mandated "public review" period as per proposal A then this proposal would not be needed.

Proposal C: Work with stakeholders to develop a framework to make a determination of a diligent effort

2 members: 5's, 5 members: 4's, 2 members: 3's, 2 member: 2's, 1 member: 1

- Will come back to group next meeting with a revised version of this proposal

Proposal D (added by group): Provide greater transparency around HCD review for both 3<sup>rd</sup> party commenters and local governments when responding to 3<sup>rd</sup> party comments.

9 members: 5's, 2 members: 4's, 1 member: 3's

## **Housing Element Implementation**

Staff presented report relating to improving housing element implementation. Per SB 375, HCD is reviewing most housing elements on an eight (8) year cycle instead of five (5) year cycle. After HCD has determined element compliance, some jurisdictions: (1) do not report on progress in meeting requirement (APR); (2) do not follow through on key actions in the housing element (e.g. rezoning, ordinances, removing constraint) and/or (3) take conflicting actions (e.g. growth control, site change, downzoning, use conditions) that do not comply with the housing element or State housing law and that fundamentally change the contents of the element found in compliance.

### Discussion:

- Statute already has consequences for failure to implement including rezoning consequences through Government Code (GC) 65583.1(c)(7) (SB 375), GC 65584.09 (AB 1233), and no-net loss provisions.
- Some members believe HCD element certification/decertification doesn't have an effect, others disagree.
- A lawsuit is the only way to compel action for implementation
- Lots of legal tools already exist to enforce implementation
- Review of APR's and follow-up letters have same effect as certification/decertification
- Make lawsuits easier, award damages in order to recoup costs incurred by plaintiffs
- Legal resources/actions are limited in their availability/feasibility

- Element certification can be obtained on false pretenses when jurisdictions take actions after certifications which are contrary to element which should be addressed.
- Conditional compliance and decertification should be applied equally
- A strengthened APR review could include letter saying implementation not occurring (not decertification)
- Concern that conditional compliance sometimes used to approve inadequate elements
- Important to distinguish efforts, i.e. good faith efforts vs. egregious actions

### **Proposals:**

Proposal A: Amend statute to expressly enable HCD to (1) find a housing element in conditional compliance based upon a jurisdiction's commitment to complete specified action(s) by a date early in the planning period and (2) rescind compliance when a jurisdiction's actions or inactions conflict with major housing element provisions that HCD determined to be in compliance.

5 members: 4's, 2 members: 3's, 3 members: 2's, 2 members: 1's

- A majority of the members believe decertification/conditional compliance is currently in HCD's authority that doesn't require legislative changes.

Proposal B: Develop a technical assistance paper on GC Section 65863 (no-net-loss Law), clarifying, among other things, how capacity calculation is done in relationship to the income categories.

5 members: 5's, 5 members: 4's, 1 member: 3

Proposal C: Provide HCD with more authority related to the implementation of housing elements. Among other things, development of technical assistance program to assist jurisdictions in implementing the housing element, this may include: site visits, clearinghouse of best practices, development of sample ordinances.

No Vote – further clarification needed, comeback with revision

Proposal D: Identify incentives for jurisdictions to implement the housing element. For example, identify funding programs that could interface with housing element compliance and implementation.

1 member: 5, 1 member 4's, 7 members: 3's, 1 member: 2, 1 member: 1

- Incentives should provide for housing production, not implementation
- Incentives should be in context of sustainability, GHG reduction, affordable housing as part of broader policy context and goals.

Proposal E: Amend statute to require charter cities to submit housing element annual progress reports.

7 members: 5's, 1 member: 4's, 3 member: 3's, 1 member: 1